

# Joonu-Noel Andrews Coste Attorney at Disability Rights NC

Equal Justice Works Fellow, sponsored by an Anonymous Donor

Reducing the NC's Overreliance on Psychiatric Residential Treatment Facilities to  
provide the care and treatment to children with mental health disabilities.

Campbell Law class of 2019

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# We are in a liminal period – a critical juncture



When day comes we ask ourselves,  
**where can we find light in this never-ending shade?**  
The loss we carry,  
a sea we must wade  
We've braved the belly of the beast  
We've learned that quiet isn't always peace  
And the norms and notions  
of what just is  
Isn't always just-ice  
And yet the dawn is ours  
before we knew it  
Somehow we do it  
Somehow we've weathered and witnessed  
a nation that isn't broken  
but simply unfinished  
—Amanda Gorman

# Health Injustice is a Direct Consequence of Discrimination

While there may be some identifiable underlying genetic vulnerabilities, a picture of “racial/ethnic health disparities due to differential loss of health insurance, poorer quality of care, inequitable distribution of scarce testing and hospital resources, the digital divide, food insecurity, housing insecurity, and work-related exposures” —all direct consequences of race, disability, class, and age-based discrimination— will emerge as the most significant driver of mortality and COVID-19-related disability.

Monica Webb Hooper et al., *COVID-19 and Racial/Ethnic Disparities*, 323 JAMA 2466, 2466 (2020)

# Psychiatric Residential Treatment Facility (PRTF)

## 10A NCAC 27G .1901 SCOPE

- (b) A PRTF is one that provides care for children or adolescents who have mental illness or substance abuse/dependency in a non-acute inpatient setting.
- (c) The PRTF shall provide a structured living environment for children or adolescents who do not meet criteria for acute inpatient care, but do require supervision and specialized interventions on a 24-hour basis.
- (e) The PRTF shall serve children or adolescents for whom removal from home or a community-based residential setting is essential to facilitate treatment

Judicial Review of admission/continuing admission - N.C. General Statutes §§ 122C-121, 224 – 224.4.

Admission is based on youth meeting eligibility criteria in the clinical coverage guidelines for Medicaid or private insurer.

# PRTF Providers

## **For-Profit Providers in NC**

- Strategic Behavior Health, Inc. (174)
- NOVA, Inc. (42)
- Alexander Youth Network, Inc. (48)
- Thompson Child and Family Services (24)
- Cornerstone Treatment Program, Inc. (36)
- Premier Health Services, Inc. (12)
- Premier Services of Carolina, Inc. (12)
- Universal Health Services (18)
- Canyon Hills Treatment Facility, Inc. (24)

## **Non-Profit Providers in NC**

- Whitaker (18) - State-operated
- Eliada Homes, Inc. (24)
- Children's Hope Alliance (9)

# PRTF Context

## Resident characteristics

- Racial/Ethnic minorities
- Multiple disabilities
- Low-income/Low-wealth
- In care of County Department of Social Services/Post-Adoption
- Juvenile Justice involvement
- Trauma
- Boys

## Payment

# • Medicaid

- Private Insurance/Tricare
- Out of Pocket

# Client Story: Legal Issues Part 1 of 3

## Action

- Failure to provide basic necessities – clothing/shoes
- Interfering with clinical treatment plan
- Extended wait to communicate with father
- Failure to de-escalate mental health crisis

## Legal issue Implicated

- Child Welfare - Neglect
- Abuse, Violation of ADA / Olmstead mandate.
- Civil rights of minors in 24-hour facilities/state license requirements for staffing
- State licensing requirements for training/competency

# Client Story: Legal Issues Part 2 of 3

## Action

- Charged in juvenile court.
- Transferred to new facility
- Failure to provide dental care and glasses.
- Physical abuse by staff member
- Failure to obtain medical treatment and failure to allow child to call family members/counsel.

## Legal Issue Implicated

- Juvenile Justice – ADA, capacity
- Medicaid, ADA / Olmstead
- Child Welfare - Medical Neglect
  
- Child Welfare - Abuse (CPS), Criminal Investigation (Sherrif), Licensing investigation (NC DHHS/DRNC)



# Client Story: Legal Issues Part 3 of 3

## Action

- Failure to identify need for IEP.
- Failure to provide judicial review of continued admission
- Dismissal of charge in juvenile court
- Discharge to lower TFC - more freedom

## Legal Issue Implicated

- IDEA -Right to FAPE/child find.
- Due Process / state statutory right to review
- Juvenile Justice - Capacity to proceed
- Child Welfare - DSS permanency order, Medicaid, ADA / Olmstead, IDEA

# Systemic Approach to Ending Oppression

**To Oppress: to unjustly treat or control**

To Marginalize: to treat as insignificant or peripheral

## Three critical questions

Where is the power?

What are the cognitive frameworks guiding the flow of power?

How do we interrupt the oppressive coupling of ideologies and power?

# Freedom

- Kant – Innate Right of Freedom - “Independence of compulsory will of another.”
- Locke – The law of Nature "teaches all mankind who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty or possession."
- Two predominant groups of organizing principles of State Power
  - Philosophical liberalism (individual unit of analysis, life, health, liberty)
  - Economic Capitalism (private property ownership and rights, Profits, losses, labor, wealth, capital accumulation)
  - Social theory (hierarchies) wrap around each bundle of principles, with the State Power serving at the core. Give Form and Expression in society – identifiable as living conditions.

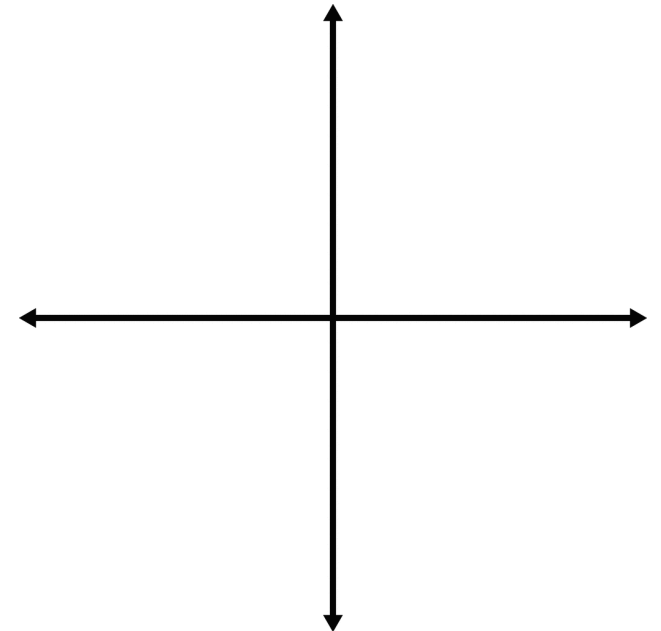


Equality?

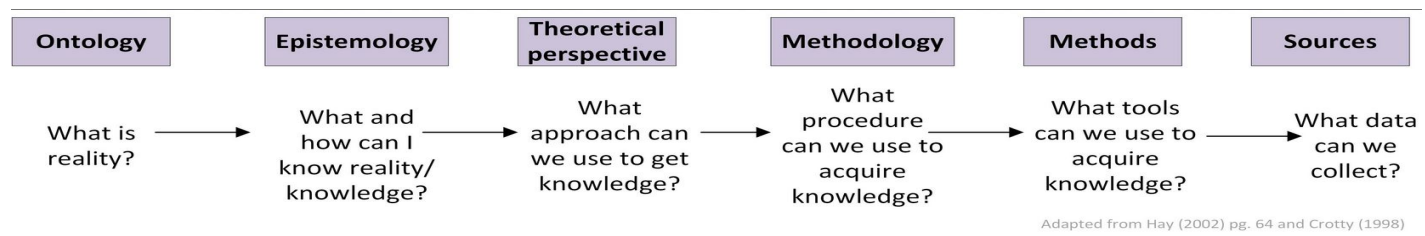
Becoming  
Conditions-  
focused  
VS.  
Social Identity-  
focused

*No one is just one thing.* - Edward Said

- Socially-assigned identities are what are normalized in our society as "identifiable."
- Conditions and socially-assigned identities arise at the intersection(s) of power.
- Intersectional analysis shifts what we see as "fixed."



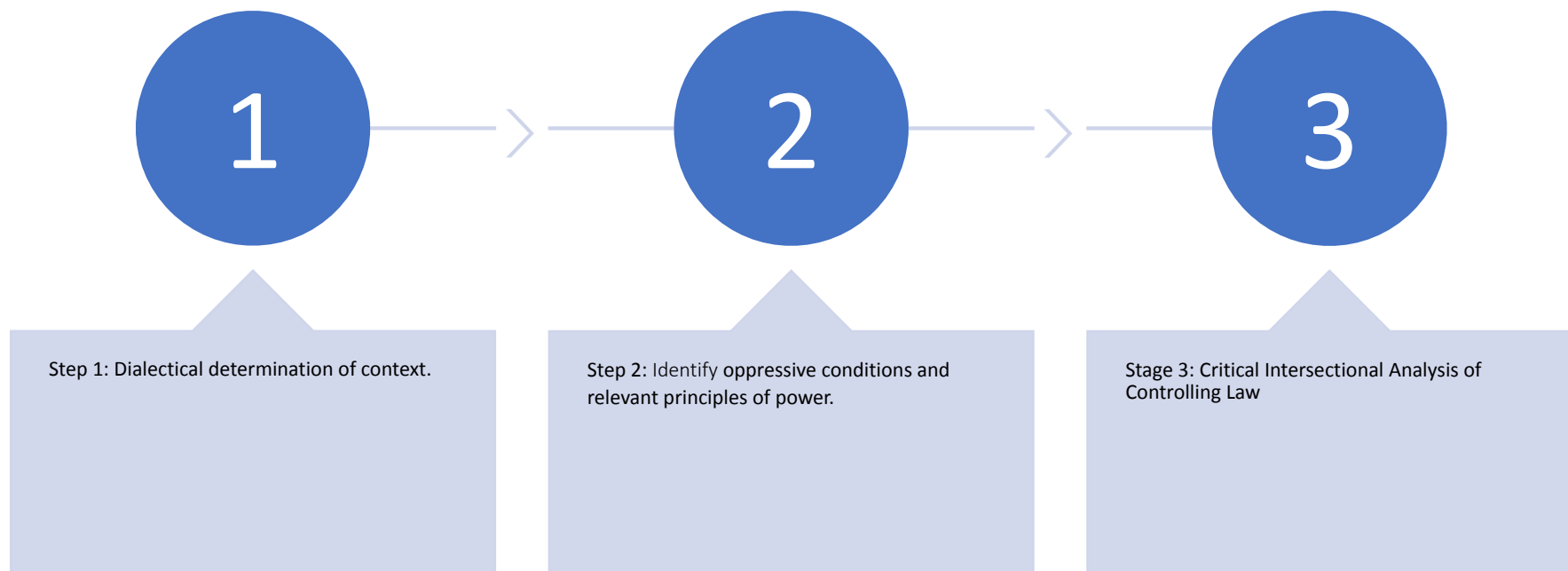
# The Legal System as an Epistemic System



- Power of the State flows through the law and gives form and expression of social theories (hierarchies) and ideologies (treated as facts) through oppositional dialog.
  - Forms and Expression = Structures and Processes by which we:
    - Obtain knowledge
    - Evaluate (competing) knowledge claims
    - Test (competing) knowledge claims
    - Legitimize (privilege) knowledge claims
    - Delegitimize (oppress) knowledge claims
    - Use knowledge for future societal formation

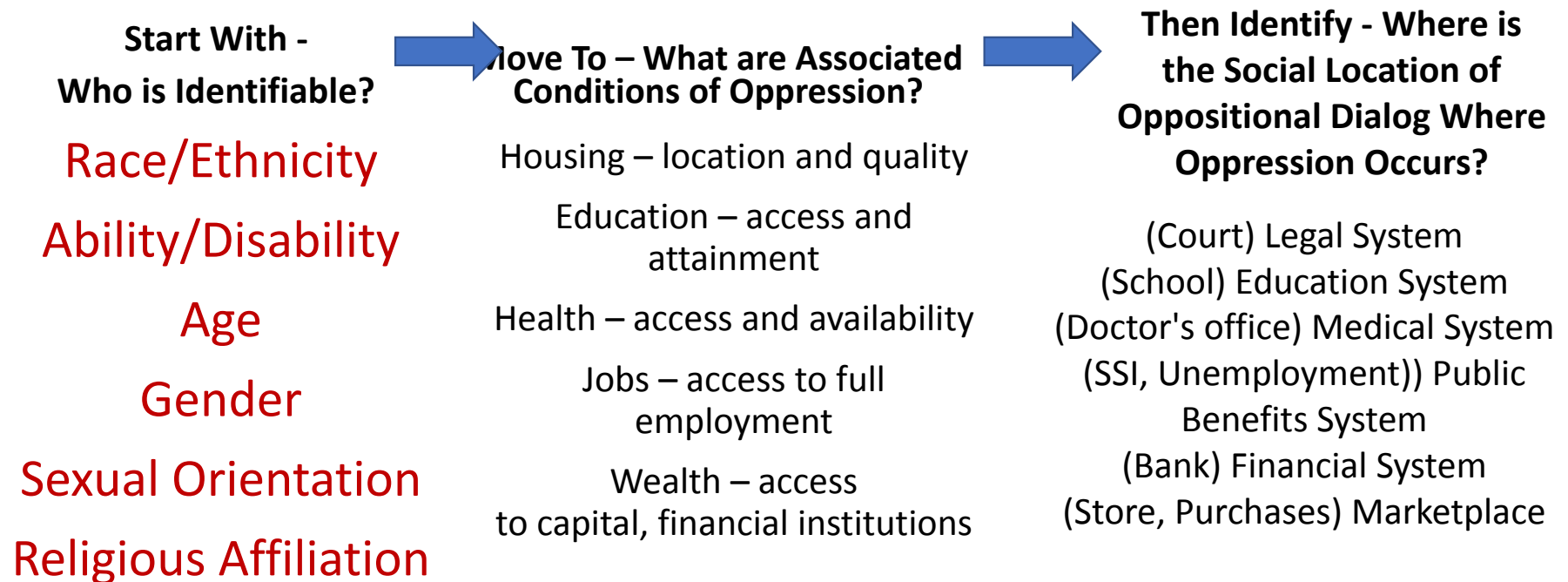
# Critical Intersectional Analytical Framework

## Three Stages



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# Analyzing for the Intersections of Multiple Social Identities within the Social Context of Co-Producing Systems of Power





# Critical Intersectional Analysis Applied Generally

## Critical Intersectional Analysis of Controlling Law

1. What are the **core principles**? What are the forms and expressions of these principles? How do forms and expressions change?
2. What are the express **normative aspirations** sought through this legal action?
3. What **power differentials** (social theories/ ideologies) perpetuate epistemic oppression and epistemic resistance that interfere with dialog among equals?
4. **What is the effect** of this newly observed and conceptually-generated knowledge on real people in real life? Does the effect align with the desired remedy, which is identified by the oppressed community itself?

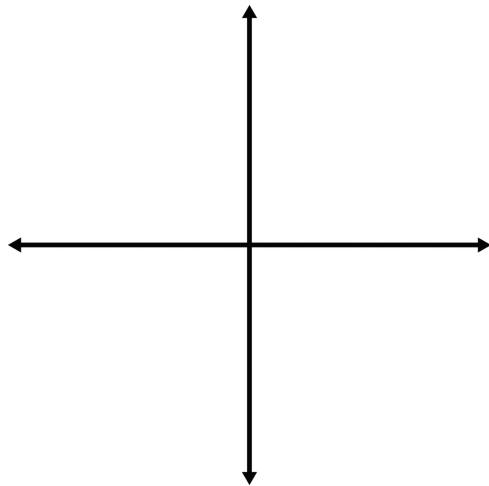
## Analytical outcomes

1. Freedom, as expressed by State Power along the axes of liberalism and capitalism, each given form and expression by social theories (of hierarchy.)
2. Equality. BE SPECIFIC! (ex. Model of equal well-being. As described by The Beloved Community.)
3. Normative assumptions (in the law itself) that militate against equality/perpetuate inequality in oppositional dialog.
4. In what real-life ways do these identified normative assumptions play out against the normative aspiration sought?

# Moving between Individualized Analysis and Systemic Analysis

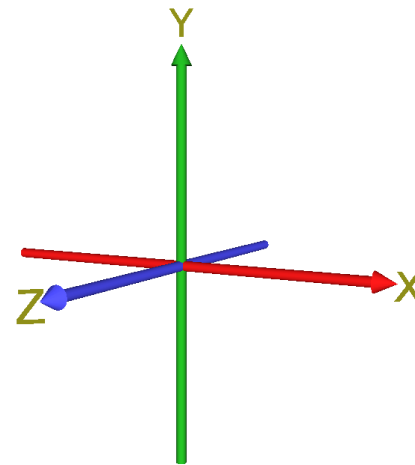
Ex. Intersection of Liberalism and Capitalism with regard to race.

"Was it a discriminatory interaction?"



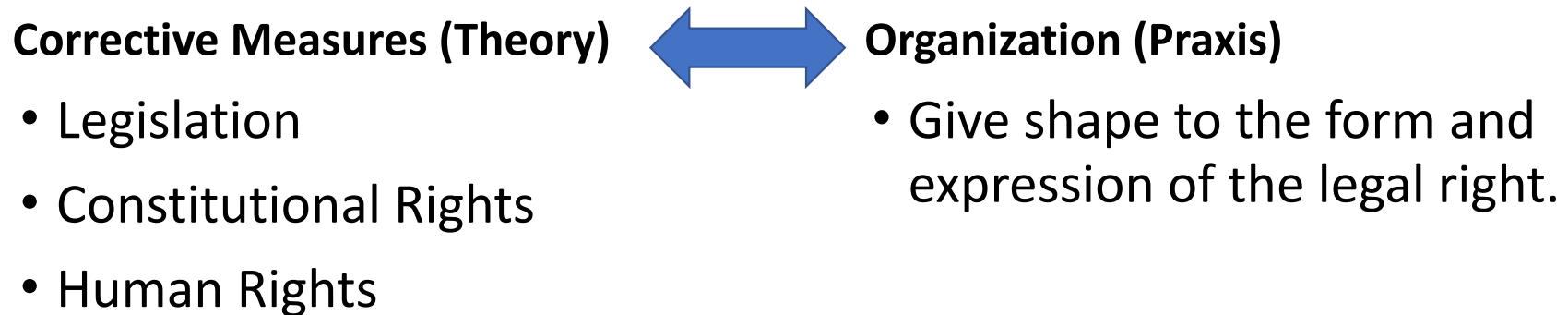
Ex. Intersection of Liberalism, Capitalism, with regard social hierarchy in the space of the legal system.

"How are conditions resulting at this intersection oppressing peoples?"



# Where Do We Go From Here?

Dr. Martin Luther King Jr.





Becoming  
Who We  
Long To Be  
As  
Americans

We will rebuild, reconcile, and recover  
and every known nook of our nation and  
every corner called our country,  
our people diverse and beautiful will emerge,  
battered and beautiful

When day comes we step out of the shade,  
afame and unafraid

the new dawn blooms as we free it  
for there is always light,

if only we're brave enough to see it

If only we're brave enough to be it.

– Amanda Gorman